

**CHARGE:** 505(a)—the article, when shipped, was a new drug which may not be shipped in interstate commerce since an application filed pursuant to law was not effective with respect to the drug.

**DISPOSITION:** Merritt Corp., claimant, having filed a motion for consolidation and removal, the court, on 5-16-58, after consideration of the briefs of the parties, handed down the following opinion in denial of the motion:

O'SULLIVAN, *District Judge*: "This cause is before the Court upon motion of Merritt Corporation to consolidate this cause with cause No. 17780, also pending in this court, Civil Action 5184 pending in the United States District Court for the District of Ohio, Eastern Division, and cause No. 16750, pending in the United States District Court for the Western District of Pennsylvania, and to remove the cases so consolidated for trial in the Southern District of New York. After due consideration thereof, the Court does find and order as follows:

"(1) The claimant, Merritt Corporation, claims that its motion has validity by reason of the provisions of 21 USC 334(a) and 21 USC 334(b), or if not entitled to have its motion granted under those two statutes, then under 28 USC 1404(a) or 28 USC 1404(b).

"(2) The Government's libel is bottomed upon its claim that the articles subject to the libel constitute a new drug and that there is no statutory authority for this Court in such case to remove or consolidate the causes mentioned, by virtue of the above-mentioned statutes. The Court so finds.

"(3) Claimant asserts that the cause pending in the District Court of Pennsylvania is, in effect, a misbranding case which would authorize the removal sought. If such is true, then a motion might well be addressed to the Pennsylvania District Court to remove that cause to the Southern District of New York, and the other causes pending in Michigan and Ohio might well be held in abeyance pending disposition of the Pennsylvania cause so removed to New York.

"NOW, THEREFORE, it is hereby Ordered that the motion of Merritt Corporation to consolidate and remove the mentioned causes may be, and it is, denied."

On 8-27-58, the claimant having consented, the court entered a decree of condemnation and ordered that the product be destroyed.

**5583. Royal jelly capsules.** (F.D.C. No. 40945. S. No. 69-118 M.)

**QUANTITY:** 500 capsules, each containing 50 mg., of *royal jelly* at New York, N.Y., in possession of Reid & Cubit, Inc.

**SHIPPED:** 9-10-57, from Linden, N.J.

**LABEL IN PART:** "This Royal Jelly from selected queen cells is not more than two days old after introducing the larvae which gives the most active concentration."

**ACCOMPANYING LABELING:** Printed matter designated "Reprints of Scientific News Reports on Royal Jelly."

**RESULTS OF INVESTIGATION:** The article was shipped as described above in bulk containers and, upon receipt at New York, N.Y., it was repackaged into small vials and relabeled by the dealer as above described.

**LIBELED:** 12-10-57, S. Dist. N.Y.

**CHARGE:** 502(a)—the labeling accompanying the article, while held for sale, contained false and misleading representations that the article would sexually rejuvenate, increase the life span, and give a lift to the aged and infants; and 505(a)—the article was a new drug within the meaning of the law, and an application filed pursuant to law was not effective with respect to the article.

**DISPOSITION:** 1-6-58. Default—destruction.

**DRUGS IN VIOLATION OF PRESCRIPTION LABELING REQUIREMENTS**

**5584. Various drugs.** (F.D.C. No. 40985. S. Nos. 79-421 M, 79-423/4 M, 79-426/9 M.)

**QUANTITY:** 10 vials of *Suavitil benactyzine hydrochloride tablets*, 700 tablets of *Belladenal* in an unlabeled btl., 1 700-tablet labeled btl. of *Doriden*, 1 800-tablet btl. of *Metamine with butabarbital*, 1 850-tablet btl. of *Ritalin*, 1 1,000-tablet btl. of *Plimasin*, and 7 100-tablet btls. of *Premarin*, at Jersey City, N.J., in possession of Carl H. Kaplan Sales Co.

**SHIPPED:** Between November 1956 and October 1957, from Rouses Point, Yonkers, and New York, N.Y.

**RESULTS OF INVESTIGATION:** The articles, except for the *Premarin tablets*, consisted of physicians' samples which the consignee, Carl H. Kaplan Sales Co., had obtained from various drug salesmen, drug firms, and unknown sources, and had transported to Jersey City. All of the articles, including the *Premarin tablets*, were repacked and relabeled after receipt by the consignee.

**LIBELED:** 12-2-57, Dist. N.J.

**CHARGE:** 502(b)—while held for sale, the labels of the *Suavitil benactyzine hydrochloride tablets*, *Belladenal tablets*, *Doriden tablets*, *Metamine with butabarbital tablets*, and *Plimasin tablets* failed to bear (1) the name and place of business of the manufacturer, packer, or distributor, and (2) an accurate statement of the quantity of contents; 502(d)—the *Belladenal tablets* and *Metamine with butabarbital tablets* contained chemical derivatives of barbituric acid, and while held for sale, their labels failed to bear the name, and quantity or proportion of such dervative and in juxtaposition therewith the statement "Warning—May be habit forming"; 502(e) (2)—the label of the *Belladenal tablets*, while held for sale, failed to bear a statement of the quantity or proportion of the alkaloids of belladonna contained therein; 502(f) (1)—while held for sale, the labeling of the *Suavitil benactyzine hydrochloride tablets*, *Belladenal tablets*, *Doriden tablets*, and *Metamine with butabarbital tablets* failed to bear adequate directions for use; and 503(b) (4)—all of the articles were drugs subject to 503(b) (1), and the labels of the articles, while held for sale, failed to bear the statement "Caution: Federal law prohibits dispensing without prescription."

The libel alleged also that an article labeled "Obbron" was misbranded under the provisions of the law applicable to foods, as reported in notices of judgment on foods.

**DISPOSITION:** 1-15-58. Default—destruction.

**DRUGS AND DEVICES ACTIONABLE BECAUSE OF FAILURE TO BEAR ADEQUATE DIRECTIONS OR WARNING STATEMENTS\***

**5585. Super Protein Formula "90" and Formula "90" Supplement.** (F.D.C. No. 41434. S. No. 75-649 M.)

**QUANTITY:** 7 pkgs. containing 1 btl. of *Super Protein Formula "90"* and 1 btl. of *Formula "90" Supplement* at Phoenix, Ariz.

**SHIPPED:** 7-10-57, from Hollywood, Calif., by Hi-Pro Products Co.

**LABEL IN PART:** (Btl.) "MpDs \* \* \* Super Protein Formula '90' An aid to Weight Reducing Increases Energy - Helps Reduce Weight \* \* \* MpDs is a Balanced Protein Food Supplement Contains No Calories \* \* \* 180

\*See also No. 5584.